

## 2 Remarks

Reconsideration of the objections and rejections set forth in the Final Office Action mailed 12 February 2009 is respectfully requested.

Claims 25 and 26 remain pending in the present application. Claim 25 was amended to recite "an isolated antibody", as suggested by the Examiner (Final Office Action mailed 12 February 2009 at 3), and recite the corresponding action of isolating the antibody raised against the protein produced by the cell-free system. The current claims do not introduce new matter.

### 2.1 Objection to the Disclosure Under the First Paragraph of 35 U.S.C. § 132(a)

The Examiner reiterated her objection to the amendment to the Specification made in the Amendment filed 30 January 2006 for allegedly introducing new matter in violation of 35 U.S.C. § 132(a). The Applicants respectfully continue their traversal of the objection in view of the following remarks.

The Applicants note the Examiner has apparently clarified the original objection by stating more specifically that, the alleged new matter is limited to the phrase "both of which are incorporated herein in their entirety and for all purposes". *Id.* at 2-3. However, the Applicants continue to believe that the phrase now at issue is not new matter for the reasons offered in the Amendment and Response filed 3 November 2008.

The Applicants continue to believe that the phrase in question is not part of the disclosure of the invention, but a statement perfecting the Applicants' right to claim priority by defining the scope of the earlier filed material that forms the basis of the priority claim, i.e., the entire disclosures of the documents for all purposes. As the Applicants explained—and the Examiner declined to rebut—35 U.S.C. § 132(a) provides in pertinent part that "[n]o amendment shall introduce new matter into the *disclosure of the invention*." 35 U.S.C. § 132(a) (1999) (emphasis added). As the Examiner noted, the amendment to the Specification was made to perfect a claim of priority to two prior U.S. patent applications. Office Action Mailed 20 January 2008 at 3-4. The Applicants respectfully note that claims of priority are not considered to be part of the disclosure of the invention. For example, the Applicants respectfully draw the Examiner's attention to M.P.E.P. § 608, which enumerates the elements of the Disclosure, this section does not include claims to priority. Indeed, a claim to priority is not part of the Disclosure, because it is not part of the description of the invention; rather it is the perfection of a legal right by the Applicants. So, an amendment introducing or modifying a priority claim cannot introduce any "new matter" as that term is used in 35 U.S.C. § 132(a).

The Applicants therefore respectfully request the Examiner to either explain why the phrase in question is new matter despite the arguments offered by the Applicants, explain the exact location(s) of the alleged new matter in the priority documents, or withdraw the rejection.

## 2.2 Rejections Under 35 U.S.C. § 101

Claims 25 and 26 were rejected as allegedly reciting an invention that is not statutory subject matter. The Applicants respectfully submit that the current claims recite statutory subject matter.

## 2.3 Rejections Under 35 U.S.C. § 102(b)

Claims 25 and 26 were rejected as allegedly anticipated under 35 U.S.C. § 102(b) by McGuire, et al. or independently by Hardy, et al. The Examiner maintained these rejections despite the Applicants response on the grounds that the rejected claims are directed to a product-by-process, and the distinguishing limitations of the claims at issue are irrelevant to product-by-process claims. Final Office Action mailed 12 February 2009 at 5. These rejections are respectfully traversed in view of the following remarks.

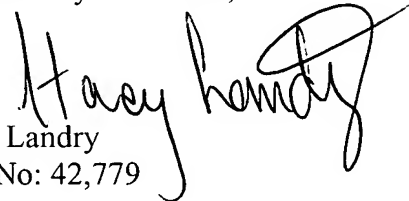
The Applicants respectfully note that McGuire, et al. teaches the formation of antibodies to products of the *gag* gene of the naturally occurring equine infectious anaemia virus ("EIAV"); Hardy, et al. teaches the formation of antibodies to the viral capsid of the Norwalk virus ("NV"). Thus, both McGuire, et al., and Hardy, et al., teach raising antibodies against proteins of *naturally occurring* viruses. Therefore neither of these references, alone or in combination, shows or suggests the claimed antibody specific to a capsid of a *non-naturally occurring virus*. The Applicants therefore respectfully request that the Examiner withdraw the rejections.

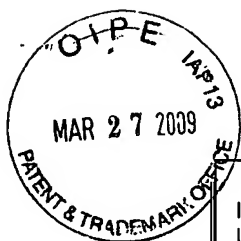
### 3 Conclusion

In view of the foregoing, it is respectfully submitted that the above-identified patent application is in condition for allowance. A Notice of Allowance is therefore respectfully requested. The Examiner is encouraged to contact the undersigned at the telephone number or e-mail address provided below to resolve any remaining questions or issues.

QUINE INTELLECTUAL PROPERTY LAW GROUP  
P.O. BOX 458, Alameda, CA 94501  
Tel: 510 337-7871  
Fax: 510 337-7877  
PTO Customer No.: 22798  
Deposit Account No.: 50-0893

Respectfully submitted,

  
Stacy Landry  
Reg. No: 42,779



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on March 23, 2009.

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

By: Kimberly Cheung  
Kimberly Cheung

Appl. No. : 10/527,973  
Applicant : Jairam R. Lingappa, et al.  
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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**MCKESSON STATEMENT OF RELATEDNESS**

Sir:

In view of *McKesson Information Solutions v. Bridge Medical* (Fed. Cir. 2007), and MPEP 2001.06(b)), Applicants specifically inform the Examiner that this case may be related to the following U.S. Patent Application(s):

USSN 09/020,144, filed February 6, 1998 by Jaisri R. Lingappa, et al. issued as

USPN 6,593,103 on July 15, 2003

USSN 10/346,654, filed January 17, 2003 by Jaisri R. Lingappa, et al. issued as

USPN 7,348,134 on March 25, 2008

USSN 10/243,509, filed September 13, 2002 by Jaisri R. Lingappa, et al.

USSN 11/903,494, filed September 20, 2007 by Jaisri R. Lingappa, et al.


The Examiner is specifically encouraged to review the file history, including art made of record, as well as any substantive action in the above application(s) including any Restriction Requirements, Office Actions, Responses, Appeals, Appeal Briefs, Examiner's Replies, Notice(s) of Allowance or Issuance in the above-mentioned related application(s), prior to taking any action in the subject application. Applicants further note that the Examiner is aware that prosecution may be ongoing in any related case, and that the Examiner will continue to evaluate the related cases as needed.

Per McKesson, the Examiner is specifically advised that all such related applications MUST be evaluated for double patenting and for obviousness-type double patenting issues prior to allowance of any claim in the subject application.

Applicants understand that, due to modern and easy access by the Examiner to related cases on PAIR, or other electronic databases available to the Examiner, there is no need for Applicant to submit copies of any paper in the file wrapper for any related case.

Applicant believes that no fee is required for submission of this statement. However, if a fee is required, the Commissioner is authorized to deduct such fee from the undersigned's Deposit Account No. 50-0893. Please deduct any additional fees from, or credit any overpayment to, the above-noted Deposit Account.

Respectfully submitted,

  
Stacy Landry  
Reg. No. 48,581

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.  
P.O. BOX 458  
Alameda, CA 94501  
(510) 337-7871  
Fax (510) 337-7877